



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 7273-99
28 February 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 31 May 1973 for four years at 17. The record reflects that you served without incident until 30 October 1973 when you were convicted by summary court-martial of three periods of unauthorized absence (UA) totalling about 46 days, from 4 September to 1 October, 2-17 October, and 23-25 October 1973. You were sentenced to 20 days of confinement at hard labor and a forfeiture of \$150.

On 9 July 1974 you submitted a request for an undesirable discharge for the good of the service to escape trial by court-martial for two periods of UA from 19 November to 19 December 1973 and 19 March to 30 April 1974. Prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. On 6 August 1974 the discharge authority approved the request and directed an undesirable discharge. You were so discharged on 30 August 1974.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, good post-service conduct, and the fact that it has been more than 25 years since you were discharged. The Board noted your contention that at the time of discharge, you were told that the undesirable discharge would be upgraded after a year. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your conviction by summary court-martial of 46 days of UA and the fact that you accepted discharge rather than face trial by court-martial for two periods of UA totalling about 73 days. There are no automatic provisions for upgrading a discharge. Even if you were told that it would be upgraded after a year, that would not provide a valid basis for recharacterizing service. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board concluded that you received the benefit of your bargain with the Navy when your request for discharge was granted and you should not be permitted to change it now. The Board thus concluded your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director